

EXHIBIT 4

To

Memorandum In Support of TriPath Imaging, Inc.'s Motion to Exclude
Defenses Based on Cytac's CDS-1000

Civil Action No. 03-11142 [DPW] - Lead Case

Filed May 5, 2005

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ORIGINAL

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

* * * * *

Cytyc Corporation *

v. * C.A. #03-11142-DPW

TriPath Imaging, Inc. *

* * * * *

TriPath Imaging, Inc. *

v. * C.A. #03-12630-DPW

Cytyc Corporation *

* * * * *

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Deposition of Theodore S. Geiselman

Tuesday, October 12, 2004

The International Golf Club

159 Ballville Road

Bolton, Massachusetts 01740

----- J. EDWARD VARALLO, RMR, CRR -----

COURT REPORTER

FARMER ARSENAULT BROCK LLC, BOSTON, MASS.

617.728.4404

FARMER ARSENAULT BROCK LLC
617.728.4404

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Theodore S. Geiselman

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1 get downsized at the company?

2 A. Mostly three executives, myself, Pat
3 Sullivan and Dan Levangie.

4 MR. DANIEL: Could I have this marked as
5 Defendant's Exhibit 316.

6 (Defendant's Exhibit 316 marked for
7 identification.)

8 BY MR. DANIEL:

9 Q. Mr. Geiselman, I show you what's been
10 marked as Defendant's Exhibit 316. I want to ask
11 you to take a look at that document and let me know
12 if you've ever seen it before today.

13 A. No.

14 Q. Please turn to page Bates-labeled 119931.

15 A. 119931? Okay.

16 Q. And this page shows a photograph and has a
17 heading that says Cytac CDS 1000?

18 A. Mm-hmm.

19 Q. Does this picture appear to reflect what
20 you understood to be Cytac's CDS 1000 in the early
21 1990s?

22 MS. PIROZZOLO: Objection.

23 A. Yes. As best I can tell from the
24 photograph, yes.

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1 Q. You'll notice at the top it indicates a
2 date range of 1987 to 1994.

3 A. Mm-hmm.

4 Q. Do you know what those dates refer to with
5 respect to the CDS 1000 system?

6 A. Well, 1987 was when Cytac was founded and
7 Cytac was founded, as anybody can read in any of
8 their documents, to do this particular project. And
9 1994, I assume, it's not my document, is the date as
10 I said, February, when we pretty much shut the --
11 not pretty much, we officially shut down the
12 development of this project in this state.

13 Q. Who founded Cytac in 1987?

14 A. Stanley Lapidus.

15 Q. Anyone else?

16 A. And I think Fred Farber previously
17 mentioned was a cofounder, not equal but some level.

18 Q. Do you know when Patrick Sullivan started
19 with Cytac?

20 A. I do not.

21 Q. Was he already with the company when you
22 started in 1993?

23 A. Yes, mm-hmm.

24 Q. Other than the FDA issue which we've

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1 discussed, do you know any other reason why the CDS
2 1000 project was stopped in 1994?

3 A. Three reasons. The primary reason is,
4 when we started over we started over with no money,
5 so you have to pick and choose your battles. And we
6 knew we needed to have the ThinPrep processor on the
7 market before we could do anything else, so you have
8 to focus, as a small company. That was number one.
9 Number two was the technology originally in the CDS
10 1000 was not capable of performing at the
11 computational level that was going to be needed for
12 that particular device. The technology was just too
13 old and not powerful enough. And number three, it
14 was my determination that the approach did not meet
15 the needs of the marketplace. The overarching
16 reason was the first one stated.

17 Q. On the third grounds, meets the needs of
18 the marketplace, why did you believe that the CDS
19 1000 wouldn't meet the needs of the marketplace in
20 1994?

21 A. It was not developed using the methodology
22 I'm accustomed to: meeting with customers, finding
23 out how their laboratory works, what needs aren't
24 being met and what can be done to improve that.

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1 They were in general trying to get results on
2 slides, just answers that, once I learned pathology,
3 could not be given. That there are no absolutes in
4 the cytopathology area, so....

5 Q. Can you recall some of the specific needs
6 of the marketplace that you thought the CDS 1000
7 system would not meet?

8 MS. PIROZZOL0: Objection.

9 A. As I said, I was learning cytopathology
10 but in the most general sense, the need to help them
11 figure out their own answer and not give them an
12 answer, because it's a very subjective business.

13 Q. When you say give them the answer, what
14 are you referring to?

15 A. My recollection of the CDS 1000 is not
16 perfect; I only knew it briefly. And since we were
17 shutting it down, I didn't take that much time to
18 worry about it. I believe they were trying to
19 assist in diagnosis, but I could be wrong, and
20 that's the main thing that I disagreed with. David
21 Zahniser would be the best one to answer you.

22 Q. But it is your understanding as of 1994
23 that the CDS 1000 as it existed at that time was
24 attempting to assist in the diagnosis of a Pap test

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1 slide?

2 A. I believe so.

3 Q. Do you recall how that --

4 A. A ThinPrep Pap Test slide, not a Pap
5 smear.

6 Q. Do you know if Cytac ever tried to
7 evaluate the feasibility of the CDS 1000 system on a
8 conventional Pap smear?

9 A. I do not.

10 Q. Did you ever see the CDS 1000 system
11 operate in 1994?

12 A. I can't say that I did, no, not in 1994.

13 Q. Do you have any understanding of how the
14 CDS 1000 system operated in 1994 in general terms?

15 MS. PIROZZOLO: Objection.

16 A. No. Can't say, no.

17 Q. Do you know if the CDS 1000 system in 1994
18 would image a ThinPrep Pap Test slide?

19 A. I can't tell you how complete the system
20 was at that time, so I don't know if it would image
21 an entire slide or not.

22 Q. Do you know if it would image a part of a
23 slide at that time?

24 A. It would do something with a part of a

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1 slide, but I can't tell you what. As I said, we
2 quickly focused on, you know, "Guys, we can't do
3 this" and shut everything down in that group except
4 for David.

5 Q. In 1994 did Dr. Zahniser make a
6 recommendation to management to stop the CDS 1000
7 project?

8 A. No, I would say not. David was not that
9 kind of.... David was a true research scientist.
10 He understood the problems of the company; he
11 followed in line and went along with our decision.
12 I don't know that he made a recommendation one way
13 or the other.

14 Q. So is it your understanding that
15 Dr. Zahniser would've liked to have continued
16 development of the CDS 1000 in 1994 but for Cytac
17 management's decision to shut it down?

18 MS. PIROZZOLO: Objection.

19 A. I can't say that.

20 Q. Back when you were listing the three
21 reasons that the CDS 1000 project was stopped in
22 1994, on your number two reason you listed that the
23 technology was too old. What did you mean by that?

24 A. Primarily the fact they were using an